

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

“Track One Cases”

MDL No. 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

**MALLINCKRODT PLC’S MOTION BY SPECIAL APPEARANCE TO
STRIKE THE EXPERT REPORT OF ALEC FAHEY**

Mallinckrodt plc, specially appearing, respectfully requests that the Court strike the expert report of Alec Fahey (the “Fahey Report”).¹ Dkt. No. 1717-3 (refiled as Dkt. No. 1812-19). As explained in the enclosed Memorandum of Law, the Court should strike the Fahey Report for three reasons. First, the Fahey Report is untimely under Case Management Order 8, which required Plaintiffs to disclose and submit expert reports by March 25, 2019. Dkt. No. 1306. Second, the Fahey Report exceeds the jurisdictional discovery permitted in Special Master Cohen’s April 3 Order, Dkt. No. 1512, and should be excluded as a violation of that Order. Third, the Fahey Report is inadmissible under Federal Rule of Evidence 702 and *Daubert*, as it invades both the fact-finding province of the jury and the province of the Court to instruct the jury on the law. If the Court does not strike the Fahey Report, Mallinckrodt plc will suffer prejudice because, pursuant to the Court’s July 3, 2019 non-docketed Order and July 8, 2019 non-docketed Order, Mallinckrodt plc cannot

¹ Mallinckrodt plc is an Irish company that is not subject to and contests personal jurisdiction for the reasons explained in its pending motion to dismiss for lack of personal jurisdiction. *See* Dkt. No. 1266. Mallinckrodt plc is specially appearing to file this motion to strike the Fahey Report submitted in support of Plaintiffs’ Opposition to Mallinckrodt plc’s Motion to Dismiss for Lack of Personal Jurisdiction. *See* Dkt. No. 1717 (refiled as Dkt. No. 1812). Mallinckrodt plc does not waive and expressly preserves its pending personal jurisdiction challenges.

conduct remedial discovery, including taking the deposition of Alec Fahey or submitting a rebuttal report.²

Accordingly, Mallinckrodt plc respectfully requests that the Court grant its Motion by Special Appearance to Strike the Expert Report of Alec Fahey.

Dated: July 12, 2019

Respectfully submitted,

/s/ Brien T. O'Connor

Brien T. O'Connor

Andrew J. O'Connor

ROPES & GRAY LLP

Prudential Tower

800 Boylston St.

Boston, MA 02199-3600

(617) 235-4650

Brien.O'Connor@ropesgray.com

Andrew.O'Connor@ropesgray.com

*Counsel for specially appearing
Defendant Mallinckrodt plc*

² To the extent Mallinckrodt plc has misinterpreted the Court's orders, it requests the opportunity to move to depose Mr. Fahey and/or submit a rebuttal report.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of July 2019, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF System. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF System.

/s/ Brien T. O'Connor
Brien T. O'Connor